

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH ANDREW HYLKEMA, a
single man,

Plaintiff,

v.

ASSOCIATED CREDIT SERVICE,
INCORPORATED, a Washington
corporation; LINDA DOE and
JOHN DOE, husband and wife and
the marital community thereof,
jointly and severally,

Defendants.

NO. **C11-0211**

DEFENDANT'S OBJECTION TO
PLAINTIFF'S MOTION TO
STRIKE AFFIRMATIVE
DEFENSES

Defendants hereby object to Plaintiff's motion to strike affirmative defenses.

First, there are is no evidence to support the Plaintiff's allegations, which have been specifically denied by the Defendants. It is believed the Plaintiff intentionally disputed the debt by phone, failing to put the dispute in writing in an attempt to create a basis for litigation. The Plaintiff is a veteran Plaintiff, of at least 20 federal debt

DEFENDANT'S OBJECTION TO PLAINTIFF'S
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Case No. C11-0211

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collection cases in this court alone. He is an individual who under the circumstances should be deemed an unsophisticated consumer. See attached **Exhibit "A"**, a court printout of Plaintiff's litigation history with the US District Court, Western District of Washington.

Although not put in writing, the Defendants transmitted the Plaintiff's claim of a disputed debt subsequent to Plaintiff's telephone call. See accompanying Declaration of Eric Solberg.

It should further be noted that no discovery has been made, nor has the Plaintiff made the required initial disclosures. Plaintiff's credit reports (all 3 major reporting agencies) on which the Plaintiff bases his claim have not been disclosed.

If Plaintiff's credit report does not report the disputed debt as alleged, it is not due to any act or omission of the Defendants, but rather the national reporting agencies.

The question of whether any alleged violation was intentional or not, is a question of fact that should not be decided at this point in the litigation.

Motions to strike affirmative defenses are generally disfavored. 5C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1381 (3d ed. 2004). Although not a 9th circuit case, the standard to prevail on a motion to strike an affirmative defense was very clearly stated in *MTA Metro-North R.R. v. Buchanan Marine, L.P.*, 2006 U.S. Dist. LEXIS 88850 (D. Conn. 2006).

1 **"Plaintiff must establish that: (1) there is no question of fact that**
 2 **might allow the defense to succeed; (2) there is no substantial**
 3 **question of law that might allow the defense to succeed; and (3)**
 4 **[he] would be prejudiced by the inclusion of the defense.**

5 As an initial matter, the Plaintiff does not allege any prejudice suffered by the
 6 inclusion of the Defendants' affirmative defenses. This alone is sufficient to deny the
 7 motion. But this Court should also find that there are substantial questions of law and
 8 fact that prevent striking any of the Defendant's affirmative defenses.

9 Federal Rule of Civil Procedure 12(f) provides that a court may strike from a
 10 pleading an insufficient defense. In this case the affirmative defense that the
 11 Defendant did not perform the act or omission as claimed is a valid defense. The
 12 Plaintiff made no inquiry prior to filing suit to see if in fact the disputed debt was
 13 reported. The Plaintiff failed to state a claim for which relief can be granted as the
 14 Defendants committed no violation of the Fair Debt Collection Practices Act.

15 An affirmative defense is insufficiently pled only if it does not give the plaintiff
 16 fair notice of the nature of the defense. *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827
 17 (9th Cir. 1979). The function of a Rule 12(f) motion to strike is to avoid the
 18 expenditure of time and money that might arise from litigating spurious issues by
 19 dispensing with those issues prior to trial. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524,
 20 1527 (9th Cir. 1993), rev'd on other grounds, *Fogerty v. Fantasy, Inc.*, 510 U.S. 517,
 21 114 S.Ct. 1023 (1994). The answer and more specifically the amended answer
 22 states that the Defendant did not commit the acts alleged.

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 24
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1 Plaintiff's motion to strike affirmative defenses should be denied

2
3 DATED at Spokane, Washington, this 1st day of July, 2011.

4 LAW OFFICE OF
5 J. GREGORY LOCKWOOD, PLLC

6 /s/ J. Gregory Lockwood

7 J. GREGORY LOCKWOOD

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CERTIFICATE OF SERVICE

I, J. GREGORY LOCKWOOD, hereby certify that on July 1, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

none

and I hereby certify that I have mailed by United State Postal Service the document to the following non-CM/ECF participants:

Joseph Andrew Hylkema
477 Peace Portal Drive #107-244
Blaine WA 98230

/s/ J. Gregory Lockwood

J. GREGORY LOCKWOOD

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EXHIBIT "A"

Select A Case

This person is a party in 20 cases.

<u>2:03-cv-03686-MJP</u>	Hylkema v. Capital Recovery Associates Inc	filed 11/25/03	closed 09/20/04
<u>2:04-cv-00428-MJP</u>	Hylkema v. Progressive Financial Services Inc et al	filed 02/25/04	closed 06/16/04
<u>2:04-cv-01501-MJP</u>	Hylkema v. Diversified Adjustment Service Incorporated et al	filed 06/30/04	closed 08/04/04
<u>2:04-cv-01800-TSZ</u>	Hylkema v. Telecheck Services Inc	filed 08/18/04	closed 10/29/04
<u>2:04-cv-02253-JLR</u>	Hylkema v. Southwest Credit Systems LP et al	filed 11/02/04	closed 12/07/04
<u>2:05-cv-00101-RSM</u>	Hylkema v. RentCollect Corporation et al	filed 01/19/05	closed 02/27/07
<u>2:05-cv-00203-JCC</u>	Hylkema v. Certegy Payment Recovery Services Inc et al	filed 02/02/05	closed 05/23/06
<u>2:05-cv-01912-MJP</u>	Hylkema v. Renton Collections Inc et al	filed 11/17/05	closed 03/24/06
<u>2:05-mc-00118-JLR</u>	Hylkema v. Nationwide Collections Inc et al	filed 07/14/05	closed 02/02/06

<u>2:06-cv-00704-TSZ</u>	Hylkema v. Progressive Financial Services Inc et al	filed 05/18/06	closed 07/11/06
<u>2:06-cv-01354-JLR</u>	Hylkema v. OSI Collection Services Inc et al	filed 09/20/06	closed 11/20/06
<u>2:07-cv-01224-MJP</u>	Hylkema v. Credit Control Services Inc	filed 08/07/07	closed 09/25/07
<u>2:07-cv-01679-RSL</u>	Hylkema v. Palisades Collection LLC et al	filed 10/15/07	closed 03/11/08
<u>2:08-cv-00955-MJP</u>	Hylkema v. Stuart Allan & Associates Inc et al	filed 06/19/08	closed 07/22/08
<u>2:09-cv-00431-MJP</u>	Hylkema v. Seattle Service Bureau Inc et al	filed 04/01/09	closed 05/19/09
<u>2:09-cv-01325-RSM</u>	Hylkema v. GC Services Limited Partnership et al	filed 09/18/09	closed 10/22/09
<u>2:09-cv-01572-TSZ</u>	Hylkema v. Merchants Credit Corporation et al	filed 11/03/09	closed 12/29/09
<u>2:10-cv-00247-JLR</u>	Hylkema v. GC Services Limited Partnership et al	filed 02/09/10	closed 04/28/10
<u>2:10-cv-01048-RSM</u>	Hylkema v. GC Services Limited Partnership	filed 06/24/10	closed 07/28/10

Hylkema v. Associated

2:11-cv- Credit Service Incorporated filed 02/07/11
00211-MJP et al

PACER Service Center			
Transaction Receipt			
07/01/2011 11:14:30			
PACER Login:	gl1237	Client Code:	
Description:	Search	Search Criteria:	Last Name: hylkema
Billable Pages:	1	Cost:	0.08